

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 00-6273-CR-HUCK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ARIEL HERNANDEZ, et al.,

Defendant,

FILED BY
CLERK U.S. DIST. CT.
S.D. OF FL. - MIAMI
AUG 22 2001 PM 2:42
D.C.

**MOTION TO PERMIT FILING OF MOTION OUT OF TIME
and
SECOND
REQUEST FOR IMMEDIATE DISCLOSURE OF SPECIFIC BRADY MATERIAL**

THE DEFENDANT, **ARIEL HERNADEZ**, by and through the undersigned counsel, moves for this Court for leave to file his second "Brady Motion" out of time and for entry of an order requiring the Government to disclose and provide the following specific information and materials:

1. The Court has previously entered several Orders setting forth various dates for the filing of Motions and responses thereto. However, the undersigned, through independent investigation, has since learned that the Co-Defendant, Anthony Trentacosta, allegedly a member of the Gambino Crime Family, retired from that organization in approximately 1987.

2. This information is crucial to the defense of Ariel Hernandez, since a fair reading of the Indictment suggests that Anthony Trentacosta is the alleged link between the defendants in this cause, including Ariel Hernandez, and the Gambino Crime Family. The Defendant's ability to demonstrate that the alleged link between the Gambino Crime Family and Anthony Trentacosta was severed prior to the dates alleged in the instant Indictment is essential to the preparation of the defense and would fully exculpate the defendant in those counts which purport to allege RICO, RICO Conspiracy, Murder and the commission of violent acts in furtherance of RICO.

3. The defendant seeks the information in the actual or constructive possession of both the United Sates Government as well as the State of Florida. The Court will recall that this defendant

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is the subject of a First Degree Murder Indictment, now pending in Broward County, Florida. That Indictment is predicated upon the exact same murder alleged in the Indictment pending before this Court. The defendant suggests that it is appropriate for this Court to compel the production of State investigative materials since the State prosecutor, Peter Magrino, upon information and belief, has been appointed Special Assistant United States Attorney. Therefore, the information contained in the State prosecution and State law enforcement files is also constructively in the possession of the United States Attorney's Office which is prosecuting this cause.

4. Any information in possession of State or Federal LEO which tends to show that Co-Defendant, Anthony Trentacosta, has either completely or partially, severed his alleged ties with the Gambino Crime Family or to John Gotti, the alleged leader of that so-called organization. This request is specifically intended to include any modification to Anthony Trentacosta's alleged ties to the Gambino Crime Family which might indicate or otherwise suggest that he has either retired or semi-retired from that alleged organization or that he has otherwise become an inactive or even a less active member in that alleged organization.

5. The undersigned has been informed that the FBI and other law enforcement organizations have been actively investigating Anthony Trentacosta for several decades. The Defendant requests that the Government be ordered to search its records and to turn over to the Defendant, any and all information which suggests that Anthony Trentacosta is no longer an active member of the Gambino Crime Family, has entered retirement or semi-retirement, or has in any way modified his relationship or level of activity with the Gambino Crime Family. This information is essential to the preparation of Ariel Hernandez's defense and is not available to Ariel Hernandez through any amount of due diligence or other investigative means.

6. The undersigned has conferred with AUSA Lavecchio, regarding the matters addressed herein. The Government does not object to permitting the Defendant to file this Motion out of time, however, the Government opposes being required to provide the information sought by this pleading.

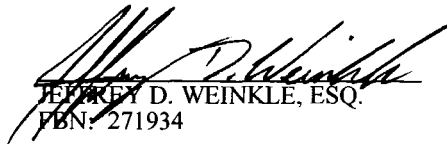
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MEMORANDUM OF LAW

The items above-listed items are required to be produced by the Government pursuant to the Due Process Clause of the Fifth Amendment as interpreted in Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963); Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173 (1959); Giglio v. United States, 450 U.S. 150 150 (1972).

WHEREFORE, the Defendant respectfully moves this Honorable Court to Order the Government provide the favorable information sought herein.

Respectfully submitted,


JEFFREY D. WEINKLE, ESQ.
FBN: 271934

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed/delivered this

21ST day of AUGUST, 2001 to: United States Attorney's Office, AUSA

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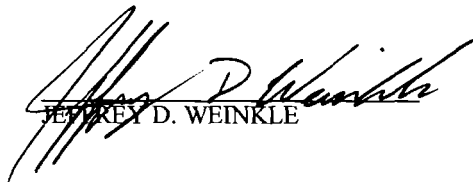
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